

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
March 14, 2013

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10am. Other Commission members in attendance were Steve Benjamin, Maria Jankowski, Kristen Howard, David Lett, Katya Herndon (designee for Karl Hade), Carmen Williams, and Kristi Wooten. Administrative staff included Executive Director, David Johnson; Deputy Director, DJ Geiger; and Administrative Assistant, Diane Pearson.

Quorum requirements have been met.

The first order of business is to approve the agenda.

Mr. Benjamin made a motion approving the agenda. Ms. Wooten seconded the motion. The motion carried.

The next order of business is the approval of minutes.

Ms. Wooten made a motion to waive the reading of and approve the minutes. Mr. Lett seconded the motion. The motion carried.

The next item on the agenda is the APA Report.

Mr. Johnson said that we are thrilled to report a perfectly clean audit. We have come a long way and have made steady progress. He congratulated Jewell Hudson for this sparkling report.

Ms. Geiger played a public radio clip featuring a client of the Charlottesville Public Defender Office who credits the office with helping him rehabilitate himself. Today this former client has a full time job with health benefits; he's paying his victims back, goes to church, and keeps in touch with his family.

Mr. Johnson introduced and welcomed Peter Boatner who is the Chief Public Defender in Staunton. We try to encourage the public defenders to attend occasional Commission meetings when they can.

He also introduced Katya Herndon who is Mr. Hade's designee today.

The next item on the agenda is the budget update.

Ms. Geiger said that in the meeting materials is a chart with all of the expenditures through February 2013 this is the last report available.

Criminal Indigent Defense Services (32701) is all of the Public Defender Offices. Capital Indigent Defense Services (32702) is all of the Capital Defender Offices. Legal Defense Regulatory Services (32703) is the Standards of Practice Enforcement. Administrative Services (32722) is the support services provided to the field offices by the Administrative Office, such as IT, Training, and HR.

On the last page of the chart under the Administrative 1300 series, you will see that in February there is quite a jump in this expenditure item. We are required to charge expenditures to the Bank of America credit card; we get penalized when we do not use it for charges that qualify for use of that card. We encourage all of our card holders to use it when the charge is eligible. We are required to pay that statement whether it is right or wrong and it must be paid by the due date. We started to put the total into the 1309 category in order to ensure timely payment. We then go back, reconcile the statements and charges and allocate the charges to the correct cost codes and service areas. This report came out before the charges could be reallocated, so it looks like the Admin office spent \$16,000 on supplies when that actually includes expenditures across the agency.

At the bottom of the chart, you will see that we have a total of \$15,196,734 for the four remaining months of the fiscal year. That is an average of about \$3.79 million per month. We have been averaging about \$3.25 million per month.

One thing the chart does not show is that for June we will only have one payroll, which is about \$1.5 million. This chart gives the expenditure picture but not projections. Right now we should be fine until the end of the fiscal year.

Ms. Geiger continued with turnover and vacancy. We projected about \$62,000 per month in savings for turnover and vacancy and have been running lower than what we budgeted. We have generated a little less than fifty percent of what initially had been budgeted. We have generated approximately \$225,000 so far. The amounts generated in FY12 and FY13 will be used in our calculations when we set up our budget for FY14.

Our Budget and Finance Director, Jewell Hudson, has given us some projections so we know what to expect at the end of the fiscal year. We know what our expenditures are, and they have been consistent. We have taken into account all known expenditures that will be incurred prior to June 30th and given a best estimate as to the amount of cash we will have at the end of this fiscal year. We have added in all of our IT projects that will include a workstation refresh and a new operating system. Microsoft XP will no longer be supported in FY14, so we are moving to Windows 7. It includes the upgraded software from Office 2003 to Office 2010. This also includes copier replacements that we will ask the Commission to consider approving. It includes our finalization of the case management system upgrade that will take the system from server driven to Internet driven.

Also included is a new judicial reversion that was included in the proposed Appropriations Act during the 2013 General Assembly session. The amount is \$38,000, a portion of our carryforward funds from the end of FY12. We have also included proposed prepayments of rent and the addition of two security walls, one in Bedford and one in Roanoke. Right now

these offices have no controlled access and anyone can walk in. Also included in the projection estimate is the Virginia State Bar dues.

The projection is that we will end the year with about \$70,000.

There was discussion regarding the judicial reversion.

A budget amendment was proposed in the Senate which proposed the elimination of twelve full time positions and the reduction of the agency appropriation by \$500,000. The language explaining the budget amendment specifically said all of the positions would come from our capital offices and would include two attorney positions and a staff person per office.

There are thirty-two positions in the capital offices, so that is more than a third of the positions.

They cited our 2010 caseload study that focused mostly on our public defender offices. The capital offices were included in the study, but it was not specific to the cases they handle. The study indicated an average of four new cases per year. The assertion was that because the number of capital murder cases had decreased statewide, the workload of our capital defender offices had decreased. As a result, fewer positions were required.

Ms. Geiger worked with Doug Ramseur, the chief defender in the southeast capital office, Steve Milani, the chief defender in the southwest capital office, Ed Ungvarsky the chief defender in northern Virginia, and Doug Wham, the deputy capital defender in the central capital office. Three of these offices had full workloads at the time; they had five, six, and eight cases at the time.

We explained the quality and nature of the work and the fact that these cases span more than a year at a time.

We received timely and very helpful assistance in fighting the cut as originally proposed from Carmen Williams, Senator Stuart, Senator Norment, Senator Howell, Judge Rosenblatt, and Judge Keenan. Carmen attended a meeting with Delegate Kirk Cox, who as you all may know, is the member with the second highest seniority on the House Appropriations Committee. This was a huge help. Senator Stuart also was a great help in getting us started in the House. The amendment as approved by the full Senate cut our budget generally by \$200,000. The language shifted from you all do not have enough work, to you need to take a look at your workload and see if you need to reallocate. This was a notable improvement.

On the next page in your binders, the two items shown include the language approved by the Conference Committee members and sent to the Governor. We do not have any indication that the language will be changed by the Governor. In the first part, they split out the money from the language. This actually improved a little from the full Senate version to the Conference Committee version.

Ms. Geiger believes that meeting with the members and having the conversations we had really helped a lot.

There are three tasks we have been instructed to complete by the language approved. They are:

1. Review the current organizational structure and workload of the capital defender offices;
2. Develop a plan to restructure the offices based on current and projected workload;
and
3. Reallocate positions, as may be appropriate, to the public defender offices with the greatest workload in relation to their staffing

The keys are that (1) they are requiring us to review it, (2) they are asking us to look at workload not caseload, and (3) they have asked us to reappropriate positions but in the next paragraph they have taken money. Ms. Geiger is not sure how to reallocate positions when the funding has been removed for the positions.

At some point before the next General Assembly session we will need to put a group together and decide how we want to conduct this study, the scope of the study, and who will participate. We will have a plan for the members to consider at the next Commission meeting.

On the second part of the page is the \$38,000 judicial reversion amount that we need to return by the end of this fiscal year. The \$200,000 reduction is listed as a reversion, and is returned to the state before June 30, 2014. This gives us a little time to plan for it.

From what we started with and what we ended up with in the budget, she believes was very good movement. It is going to require us to look at some things, and depending on what we find, we can make some adjustments or go back and say they were wrong and demonstrate why.

Mr. Johnson added that Ms. Geiger glossed over her part in all of this in that she worked really hard. Jae K. helped with the responsibilities of covering the General Assembly session.

Ms. Geiger said that Jae K. Davenport is our Standards of Practice Enforcement Attorney, and she is wonderful. She has been extremely helpful and willing to get that job done.

The General Assembly is a lot of work in a short amount of time. We created a legislative team this year. Under the legislative tab in the meeting materials is a list of voluntary team members. Jae K. helped to get information to the members with a short turn around time and participated in discussions. She was out numbered in some of these meetings, but wasn't afraid to fight for what we needed to fight for and did a great job.

Mr. Johnson said the legislative team was a great idea. It gave us some great input and these folks really got involved and came through when we needed them.

Mr. Benjamin added that this year was fantastic in that Jae K. and DJ were especially helpful in his capacity with counsel to the Senate Courts Committee because it was a jammed up year and he had very little time. In addition to the work they did with the work group, they were a tremendous resource as well. He would like to see more of the public defenders becoming involved.

Ms. Geiger said that because of Jae K.'s help they were actually able to be in both Courts committees at the same time.

We drafted Catherine Zagurskie, our Senior Appellate Coordinator, and Catherine Mullins, our Legal Resources Attorney, a couple of times. Catherine Zagurskie was very helpful with some of the more intricate appellate legislation.

She added that the legislative team worked really hard, including on weekends. They came through with some great input.

We have talked about expanding the legislative team involvement through out the year. Tim Coyne, our Winchester Chief Defender has an office space in the same building as Senator Vogel. Senator Vogel is on Senate Courts and hasn't necessarily voted with the defense side. There are opportunities like this that we are trying to look for and see what we can do.

We also tried to work more with the Virginia Association of Criminal Defense Lawyers (VACDL). We shared information with them because they struggle with trying to run their practices and attend key meetings at a moments notice.

This was a much better General Assembly session than we've had in the past.

For the last five or six years we have been providing a General Assembly Wrap Up. Through the session we track bills in three categories; new crimes, penalties, and procedural. At the end of session and the veto session, we provide the summaries of approved legislation to the public defender offices so their attorneys will have the information prior to July 1st when most all of the legislation becomes effective.

Ms. Geiger added that there is a copy of the current draft of the 2013 GA Wrap Up in the meeting materials.

At the end of the legislative update is the language of the Rule 3A:11 proposal by the Virginia State Bar. The Indigent Defense Task Force of the Virginia State Bar proposed the change to the discovery rules for Virginia late last year. We sent a letter supporting the efforts of the Task Force. The Virginia State Bar Executive Committee and council met on February 22nd and 23rd respectively to consider the proposed change. Ms. Geiger attended the Council meeting on the 23rd. They changed the nature of the vote called for by not getting into the details of the proposal. They basically asked if the members of the Task Force completed the work they had been asked to complete. The answer was a resounding yes. The proposal will be sent to the Court. It was a completely different audience for the Commonwealth Attorneys than the General Assembly.

They did make a few changes to the proposal. Paragraph (a) the second to the last sentence they added “the Commonwealth and the accused” and “exculpatory evidence” before as otherwise provided, and they added “or other applicable law”.

Paragraph (b) (3) in the first sentence they added “as soon as practicable thereafter” after the word indictment.

Paragraph (b) (4) the first sentence they added “for good cause shown and pursuant to a protective order entered by the court” before the Commonwealth, and the stricken language was actually a revision. They struck the remainder of the paragraph.

Alex Levay, the chairman on the Task Force said they made these specific changes after a discussion with Ethics Bar Counsel.

Ms. Geiger’s understanding is that the State Bar will now send the proposal to the Supreme Court. Generally when the State Bar sends a proposed Rule change, it’s regarding the government of the Bar, so it goes right to the Court. This is a little different. Because it proposes a Rule change, it likely will be referred to the Judicial Council or the Advisory Committee on Rules of Court. Most believe the Advisory Committee will receive the proposal.

The Advisory Committee meets twice per year, and its next meeting is in May.

We would like to continue our participation in this effort, and would like to get permission from the Commission for Mr. Johnson to send a letter to the Chief Justice indicating our great interest.

Judge Rosenblatt said that to clarify, this letter would not stake out a position. It is to ask for us to be included in the discussion.

Ms. Jankowski made a motion to give Mr. Johnson permission to write a letter to the Chief Justice to indicate the Indigent Defense Commission’s interest in being included in the discussion of proposed changes to Rule 3A:11. Ms. Wooten seconded the motion. The motion carried with Ms. Herndon abstaining.

Mr. Johnson said that our new Capital Defender in the central office is Joe Vigneri who was a senior capital counsel in Georgia. He attended the management conference in January even though he didn’t start with us until March 1st. Since his arrival, the office has picked up a couple more cases. They now have six cases, two of which will more than likely go to trial.

The next item on the agenda is the training update.

Mr. Johnson said that our Management Conference was held January 15th and 16th. We are really trying to engage our supervising attorneys, and the enthusiasm has been great. This gives them insight into what it’s like to run an office. We brought in some outside speakers this year.

March 11th and 12th was the Investigator Conference. This conference is rotated every other year with that of the Sentencing Advocates. We get a group of investigators together to help with the planning of it.

Every year we have certification training for approximately a thousand attorneys. We recently started the planning and filming of our new certification training. We are working toward a more professional recordation and finished project. We are bringing speakers in one at a time and the goal is to have it finished by June. Not only will this replace our old certification training but we are looking to expand our partnerships with some of the private bar associations. This new training is geared especially toward new attorneys. We are then looking to come up with some training for attorneys who are looking to be recertified.

We revamped our boot camp training program. It will be held twice a year in May and December. In the past this training was once a year. Our old boot camp was focused on training the attorneys for a jury trial. We polled the public defenders and found that jury trial was not on the list of priorities. There are so many other things new attorneys need before that. We are now focusing on more of the basics like professionalism and how to build a client relationship with some interviewing techniques, experts, laying foundations, appellate, etc. One advantage of having this training twice a year is that the groups will be smaller and will be more hands on.

Ms. Geiger added that Catherine French Zagurskie handled the appellate boot camp this year. At the completion she made a list of all of the common problem areas and is building the boot camp sessions based on the systemic issues, including how to draft the appropriate assignments of error. It will be a much more focused appellate section.

Mr. Johnson said that this is training that is not available to most lawyers. This is an intensive training, and he wants the new attorneys to come into it fresh when they are first hired.

The boot camps are scheduled for May 14th-17th and December 10th-13th.

There was discussion regarding clients being truthful with their attorneys. Mr. Benjamin maintains that it is important to him that his clients be honest with him, but there are others who are very reputable that feel strongly otherwise. The ABA standards expressly urge attorneys to seek all necessary facts for representation.

Mr. Johnson said that his belief is that you need to develop a relationship with your client so you can get the truth. There has to be trust to get the truth. He's approached it this way because he doesn't want to be surprised in court, and that is why a relationship is so important.

Ms. Williams said that trust and confidence are both very important in order to be an advocate for the client. She made an analogy of being a doctor and for a doctor to make the right diagnosis the doctor needs to know all of the symptoms.

Mr. Johnson continued with training. He said that we had seventy one people go to the NACDL conference in Washington DC February 21st to 23rd. The forensics portion was awesome.

Mr. Johnson asked Peter Boatner what he thought of the NACDL conference.

Mr. Boatner said that it was the best training he has ever been to as a lawyer. It is a cutting edge topic that we are all going to have to deal with more and more. There is a mushrooming of science in criminal court rooms from DNA all the way down to fiber analysis. There was so much available, it was impossible to soak it all in. As an experienced lawyer he still feels uncomfortable when he has to confront science in the court room. At this conference he was able to pick the areas where he needs to learn more. He took a young lawyer with him who also felt it was a great learning experience.

He said he is going to start training in his office with his attorneys about the basics of what constitutes science and what we need to know about it as lawyers in court. He feels that what we need to know is actually pretty simple. If we can incorporate it into the organization through training, it will help us to be more comfortable whenever a so called expert is in the court room.

He came away from this training with a lot of tools for specific areas, and knowing how to get himself up to speed. He thanked Mr. Benjamin for helping to get this opportunity.

Mr. Johnson also thanked Mr. Benjamin for making it possible for us and said it was a great program.

Mr. Benjamin said that he appreciates everyone's support in being there, it says a lot. He is thrilled that it was everything he hoped it would be.

The next item on the agenda is the IT projects update.

Ms. Geiger said that the IT Update tab has a list of the ongoing IT projects scheduled to be finished by the end of the fiscal year. We have the workstation refresh and the new case management system. Initially we thought we would just replace the forty-one copiers that are five years old, but we decided we would like to trade-in the remaining newer copiers and make sure all of the offices have the same equipment. This helps with networking compatibility and when we set up the new computers, everyone will have the same operating system and same software. We are asking for the Commission's permission to purchase all new copiers. We will do our best to get the best price on the trade-ins we can. We estimate the cost of the copiers will be somewhere in the \$383,000 price range. The funds are available this fiscal year.

The copiers we are looking at will be able to copy, scan, fax, and print. Some of the copiers we currently have do not have all of these capabilities.

There was discussion regarding the copiers and the available funds.

Mr. Benjamin moved to approve the purchase of new copiers. Mr. Lett seconded the motion. The motion carried.

Ms. Geiger said that a few years ago we received an audit point on our financial system, IDSS. That was one of the reasons that we moved our financial system from IDSS to CARS. Another reason is that CARS is free to state agencies. We are decommissioning IDSS this month so we no longer have to support it.

The state is going from CARS to Cardinal. We are in the current phase of agencies moving to Cardinal. In the next year and a half we will move to Cardinal. Moving from IDSS we have cut down on the number of required reconciliations and saved a good bit of work for the people in the department.

The system we use for certified attorneys to apply for certification and to update their CLE's is classified as a sensitive system because it needs to be available 24/7 for the Court. As a sensitive system, it must be audited every three years. We hired Matt Teasdale who worked for the Department of Accounts (DOA) and performed our last IT audit, coming in under budget. We hope to have that report to you by the next meeting.

Mr. Benjamin mentioned that the Commission might be interested in an upcoming article in the NACDL's Champion which was prompted by a letter he received from a judge. The judge took issue with a reference in a previously published article, authored by Bonnie Hoffman, a Deputy Public Defender in our Leesburg Office. In the article, Ms. Hoffman stated that defense attorneys were engaged in a tireless fight against the courts. The new article is a reply to the judge's concerns.

There was discussion regarding the proposed budget language requiring the Commission to conduct a review of the Capital Defender offices and perhaps opening the line of communication with our legislators and the patrons of the bills. Ms. Geiger said her hope is to meet with them outside of the General Assembly session to talk about what the specific concerns are, based on this requirement for us to do this study, so we can incorporate those concerns in the review. She is trying to do this more extensively year round. It will take time to build those relationships.

There was no further business.

Ms. Jankowski made a motion to adjourn. Ms. Howard seconded the motion. The motion carried.

The meeting adjourned at 1:00.

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director